

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Petition for Reconsideration of the)	
Request for Review of the Decision of the)	
Universal Service Administrator by)	
)	
Houghton Lake Public Library)	File No. SLD-52629
Houghton Lake, Michigan)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER ON RECONSIDERATION

Adopted: February 5, 2002

Released: February 13, 2002

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Petition for Reconsideration submitted by Houghton Lake Public Library (Houghton Lake), Houghton Lake, Michigan.¹ Houghton Lake seeks reconsideration of our denial of its Request for Review of the decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying its application for discounts for telecommunication services under the schools and libraries universal support mechanism.² For the reasons set forth below, we dismiss the Petition for Reconsideration.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The

¹ Letter from Donna J. Alward, Houghton Lake Public Library, to Federal Communications Commission, filed August 18, 1999 (Petition for Reconsideration).

² *Request for Review by Houghton Lake Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-52629, CC Dockets No. 96-45 and 97-21, Order, DA 99-1506 (Com. Car. Bur. rel. July 29, 1999) (*Request for Review by Houghton Lake*). Parties may seek reconsideration from a final action of the Commission or its designated authority pursuant to 47 C.F.R. § 1.106.

³ 47 C.F.R. §§ 54.502, 54.503.

Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all potential competing service providers to review and bid upon.⁴ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁵ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.⁶

3. The Commission's rules further provide that eligible schools and libraries with pre-existing contracts are exempt from the competitive bidding requirement under certain circumstances. In relevant part, section 54.511(c)(1) exempts contracts entered into on or prior to July 10, 1997 from competitive bidding requirements for the duration of the contract.⁷ In such a case, the service request need not be subjected to competitive bidding. However, an existing contract must have been reported on an FCC Form 470 either in the year of the funding request or in a prior funding year.⁸ The applicant's FCC Form 471 must demonstrate compliance with the competitive bidding rules by specifying, for each funding request, the FCC Form 470 in which the contract was either posted for competitive bidding or reported as a pre-existing contract.⁹

4. In our previous decision, we denied Houghton Lake's Request for Review and upheld SLD's determination that Houghton Lake had failed to demonstrate to SLD during its application

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (December 1997) (FCC Form 470); 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (Nov. 2, 2000); SLD Website, <<http://www.sl.universalservice.org>>.

⁵ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

⁶ *Request for Review by Metropolitan Public Library of Pike Township, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-120821, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 13891, para. 2 (Com. Car. Bur. 2000).

⁷ 47 C.F.R. § 54.511(c)(1). See *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5441, para. 217 (1997) (*Fourth Order on Reconsideration*).

⁸ See SLD Website, Reference, Frequently Asked Questions, <<http://www.sl.universalservice.org/reference/faq.asp#1>>.

⁹ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 1997) (Form 471 Instructions).

review that Houghton Lake had complied with our competitive bidding requirements.¹⁰ In its pending Petition for Reconsideration, Houghton Lake disputes our conclusion that it failed to demonstrate its compliance with our competitive bidding requirements.¹¹

5. Houghton Lake asserts that its January 29, 1998 letter to Merit Network established a contract and it therefore was exempt from our competitive bidding requirements.¹² Houghton Lake also explains that its employee's statement that Houghton Lake did not have a contract with Merit was intended to convey only that Houghton Lake does not use an official contract form and that its employee faxed the January 29, 1998 letter as evidence of the pre-existing contract.¹³ Houghton Lake submits further information to clarify a statement in its January 29, 1998 letter that "details for products and services are not yet finalized but total costs are not to exceed \$45,000."¹⁴ The Petitioner claims that this statement does not refer to Internet connection but to other services and products that were under consideration.¹⁵ Houghton Lake further explains that the \$45,000 figure was not the contract price for the Internet connection, but the complete budget amount that the library board had designated for purchasing the necessary computer equipment and training.¹⁶

6. Section 1.106 of the Commission's Rules provides that a petition for reconsideration of an order denying an application for review will be entertained only if: 1) the petition relies on facts which have occurred or circumstances which have changed since the last opportunity to present such matters; or 2) the petition relies on facts unknown to the petitioner until after the last opportunities to present such matters could not, through ordinary diligence, have been learned prior to that opportunity.¹⁷ Although Houghton Lake presents additional clarifications, it does not and cannot argue that this was evidence that was unknown to it when it filed its Request for Review. As detailed above, the facts underlying the additional clarifications that Houghton Lake relies on in its petition had to have been known at the time of its original request for review. We find that Houghton Lake's Petition for Reconsideration fails to demonstrate that there is either a changed circumstance or new facts. Moreover, a party may not base a petition for reconsideration on new facts that were available to it at the time of its original request for

¹⁰ *Request for Review by Houghton Lake*, at 9

¹¹ Petition for Reconsideration, at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 47 C.F.R. § 1.106(b)(2).

review.¹⁸ As a result, Houghton Lake's petition for reconsideration is subject to dismissal as repetitious pursuant to Section 1.106(b)(3).¹⁹

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. 0.91, 0.291, and 54.722(a), that the Petition for Reconsideration filed by Houghton Lake Public Library, Houghton Lake, Michigan on August 18, 1999 is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

¹⁸ *Keith Maydak v. AT&T Communications*, File No. E-95-39, 14 FCC Rcd 6680, para. 7 (Com. Car. Bur. 1999) ("Section 1.106(b)(2) of the Commission's rules permit the consideration of later-supplied evidence [on a petition for reconsideration] only if the petition can show that this evidence is based on facts that were unavailable or unknown to petitioner until after his last opportunity to present such material.").

¹⁹ 47 C.F.R. § 1.106(b)(3).